



BOARD OF BARBERING AND COSMETOLOGY
CALIFORNIA DEPARTMENT OF CONSUMER AFFAIRS
P.O. Box 944226
SACRAMENTO, CA 94244-2260

INFORMATION: (916) 323-9020 FAX: (916) 445-8893 INTERNET: www.barbercosmo.ca.gov



**Board of Barbering and Cosmetology
Department of Consumer Affairs
400 R Street, Hearing Room
Sacramento, CA 95814**

MEETING OF THE LICENSING AND EXAMINATION COMMITTEE

MINUTES OF JUNE 13, 2004

BOARD MEMBERS PRESENT:

*Dr. Della Condon, President
Joe Gonzalez, Vice President
Kim McInnes, Public Member*

STAFF MEMBERS PRESENT:

*Terresa A. Ciau, Executive Officer
Dana Winterrowd, Staff Counsel
Kelly Schmidt, Staff*

BOARD MEMBERS ABSENT:

Richard Hedges, Public Member

♦ **Agenda Item #1, CALL TO ORDER**

President Condon called the meeting to order at 1:00 p.m. Committee Members introduced themselves and briefly described their backgrounds and professions.

President Condon introduced the Board's Executive Officer, Ms. Terri Ciau and the Department of Consumer Affairs Legal Counsel, Dana Winterrowd.

President Condon explained that this was a Meeting of the Licensing and Examination Committee and that their role is to make recommendations to the full Board.

♦ **Agenda Item #2, PROPOSAL FROM THE CALIFORNIA NAILS INSTITUTE OF TOKYO, JAPAN**

President Condon explained that the proposal from the California Nails Institute of Tokyo, Japan is to request that the Board approve their school's curriculum. President Condon introduced Senator Polanco (retired) to give an overview of the proposal.

Senator Polanco stated he was attending today to represent the California Nails Institute. They are interested in starting a manicure training facility in Tokyo, Japan. Their manicuring curriculum will include all of California's current requirements. The students participating would cover the entire cost. He indicated this would be an opportunity to expand the professionalism of this industry.

Senator Polanco stated that many years ago there was a process in place to accommodate applicants from out of country who wanted to take our exam and return to their country to practice. As far as he is aware it was terminated due to the proof of social security number requirement. He did not know the full reason for the termination. One of the issues may have been Senator Jackie Spear's legislation, which made sure that licenses could be used to track deadbeat dads.

Mr. Gonzalez asked Mr. Winterrowd if he had any information as to why this was stopped.

Mr. Winterrowd stated that section 30 of the Business and Professions Code requires an applicant for licensure to have a social security number.

President Condon recalls when all of this took place. She asked Senator Polanco if she was correct in stating that none of these individuals intend to practice in California.

Senator Polanco stated that this was correct. They would only come here to take the exam and then return to Japan to practice.

Mr. Gonzalez asked why this is being discussed if the law states that a social security number is required in order for the Board to issue a license.

Senator Polanco agreed that the law does require a social security number. He reiterated that the students are not going to practice here. They would come here educated to take the exam and would return to do their actual practice in Japan. It would be similar to students that come here to study abroad who pay a higher tuition and then return to their country upon completion. He feels the social security requirement is unfair to them since they are not going to pay into the system.

Mr. Gonzalez expressed that California has strict laws and is concerned about allowing just anyone to come here without following the laws. He asked if there are any statistics on what has happened in the past in regards to enforcing those that were given a license prior to the social security number requirement, specifically whether they have come back to California and used them.

Senator Polanco explained that a certificate of acknowledgement that they met the standards of California would be all that is needed. The concerns regarding the law are legitimate, but that in this instance a license to practice would not be issued. Instead an acknowledgement that they have met California standards could be given.

Mr. Gonzalez quoted from a letter dated September 16, 1996, addressed to Denise Brown, Deputy Executive Officer of the Board of Barbering and Cosmetology from the Department of Consumer Affairs, Legal Affairs.

"We are of the opinion that section 30 is explicit in providing that a license may not be issued or renewed unless the applicant or licensee provides his or her SSN"

Mr. Gonzalez stated that section 30 does not authorize the Board to accept a social security number equivalent and that the law prohibits the Board from processing an application without it.

Senator Polanco said that the distinction is that they would not be issued a license to practice.

President Condon expressed that she is very pleased there is a large Japanese company that finds their students coming here and taking our exam and meeting California requirements as prestigious. This shows the world that California has very high standards.

President Condon agrees with Mr. Gonzalez that issuing a license is a problem. She brought up an alternative that she recalls Mr. Balingit recommending. This would be to issue a *Statement of Fact* that the individual meets all of the standards that are required by California law. It would not be a license and thus not allow them to practice in California.

President Condon stated that the Board could approach this as a small pilot project and avoid creating additional backlog. The Board recently trained a number of individuals to test on the weekend at the community college facilities that have been loaned to the Board. The Board may be able to get sponsors to provide facilities for this testing process and use these individuals that have already been trained to administer the exams.

Mr. Gonzalez does not feel the Board should put any money into fact finding on this. He feels the law is very clear that a social security number is required. He is also concerned about the security issue due to the effects of 9-11.

Senator Polanco reminded Mr. Gonzalez that the law pertains to the issuing of a license. He referred to the earlier mentioned idea of issuing a *Statement of Fact* in lieu of an actual license.

Dr. Condon relayed that the law relates to the issuance of a license and the Board would not be doing that. She stated the Board has the power to issue a *Statement of Fact* and that it does not violate any of the laws. If the *Statement of Fact* were to be brought back to California it would not be usable. It is a way that individuals can take an exam under California's standards to raise the level of respect of the profession in their country.

Senator Polanco stated he is trying to come up with a win-win situation where the Board can maintain the current law for those wishing to be licensed and practice here. Each individual will come here with either a visa or a passport.

Mr. Gonzalez asked how the Board's costs would be controlled.

Senator Polanco explained that there is a built in cost that the students will pay for. He suggested the Board get legal counsel about payment by this out of country entity.

Mr. Gonzalez asked for explanation of where Bureau for Private Post Secondary and Vocational Education (BPPVE) stands on this issue.

Ms. Ciau informed the Board that BPPVE would not approve the school since it is outside of California. The application process would be the same for this situation as those that are currently coming from out of state or country. They would be required to submit a regular application. The curriculum would be reviewed by a certified outside evaluation service for equivalency. These individuals would take our exam like other applicants with the only difference being that in lieu of a license they would be given a certificate stating they have passed our exam.

President Condon asked if it would be possible for the Board to defer scheduling them until there is manageable work levels.

Ms. Ciau stated that it could be done since the scheduling of the exams is a manual process.

President Condon asked if the cost could be determined if these were done a group at a time.

Ms. Ciau pointed out that a regulation change would be required in order to charge different fees. She also noted that SB362 requires the Board to study the current fee schedule to ensure the fees are paying for the administration of Board operations. The processing of the applications for those coming from Japan would be easier if they were treated like regular applications. The only cost in this case would be the additional workload of processing and scheduling the applicants.

President Condon added that the curriculum provided meets and exceeds California's requirements. It provides an opportunity for individuals to excel in their career and it brings prestige and business to California. She encouraged the Committee to present this to the full Board for recommendation along with the stipulation that they need to be scheduled at a time when workload would not be impacted.

President Condon also stated that there is no violation of the law since a license would not be issued. She indicated that the legal counsel agreed that a *Statement of Fact* would not violate the law.

Mr. Winterrowd responded stating he was standing in for the Board's regular legal counsel, Albert Balingit. Mr. Winterrowd was not aware of what Mr. Balingit's specific opinion is on this issue.

President Condon stated the *Statement of Fact* was listed as an option on the memo prepared by Teresa Ciau who worked with Albert Balingit. She read the second option listed that the Board should consider which states:

“Grant a *Statement of Fact* certificate in lieu of a license to out-of-country applicants who pass the Board's examinations but are not eligible for licensure due to lack of a social security number. Only students who have attended schools which have curricula approved by the Board-approved evaluation service would be eligible for this certificate.”

President Condon explained about the evaluation service and how they look at the curriculums and determine if they are equivalent. These are independent agencies that provide this service.

Ms. Ciau clarified that she worked with Mr. Balingit and that he also worked with Mr. Chang who did come up with the option number two of issuing a certificate in lieu of a license without a social security number.

Mr. Gonzalez expressed concern about the fact that the Board cannot approve a curriculum for a school that is not approved by BPPVE.

President Condon explained that BPPVE only has authority over schools in California. The Board cannot approve a curriculum over the school unless it has been approved by BPPVE. This specific situation does not apply since BPPVE does not have jurisdiction.

Mr. Gonzalez stated he wanted legal counsel to look in to this.

Mr. Winterrowd stated he would take this issue back to Mr. Balingit for him to report back to the Board.

Senator Polanco closed by stating that the Board may want to take further consideration to address the issue of the social security number. He suggested the *Statement of Fact* could include a disclosure at the bottom indicating that it is not a license to practice or other legal language that would be required. He reiterated that it is considered prestigious for the students coming from Japan to receive a certificate stating they meet California's requirements.

President Condon asked if there were any members of the public that would wish to comment on this issue.

Mr. Minh Thien of Asian American International Beauty College asked if there is any way for the Board to give a school code to another country.

President Condon advised that the Board could not. That would be outside of the perimeters of this issue.

Mr. Miguel Orozco, who owns a cosmetology school in Temecula, commented that he is intrigued by this proposal. He feels that it elevates the prestige of California and the industry. He believes it could also be an economic engine that would promote business.

Dave Hamilton Jr. wanted to know how many students would the Board be looking at each month, week, or year and if it is going to create a backlog for students.

Senator Polanco estimated that participation would be about 50 to 100 individuals per month or about 1200 per year. He stated he would report back to the Board at a later date with more realistic figures.

Dave Hamilton Sr. questioned why California would want to take on any further burden just for prestige. He recommended that the nail institute sends their instructors to California to get certified and they can in turn give certificates to their students. This could reduce the number of people coming here to 5 to 20 people per year instead of 1200.

Senator Polanco stated the instructors are licensed in California and are teaching in Japan. He would caution against giving authority to an instructor to issue a certificate. This may lead to fraud.

President Condon recommended to the Committee that they take this to the full Board in the next general meeting where this can be added as an agenda item.

Mr. Gonzalez stated that he does not agree since the Board has other priorities that are more meaningful.

Dana Winterrowd stated that it is understood that two members of this Committee agree it should go to the Board and one does not.

♦ **Agenda Item #3, BARBERING AND COSMETOLOGY INSTRUCTORS**

President Condon provided background. There was legislation eliminating the instructor license. It would sunset in 2005. The Board was able to get this postponed until 2006. This is an issue that the Board was told to address as part of the Sunset Review Commission. She referred to the Executive Officer to comment on what this requires the Board to do.

Ms. Ciau stated that the Board is proposing in AB 2168 that the expiration date to repeal the instructor license be extended to 2006. She believes it would be in the best interest of the Committee and the Board to go forward and start working on whether to justify the license or other options there are right now since it is a proposal at this point. A few of the Board members and herself had a chance to meet with Mr. Bill Gage. He shared that the Board may want to consider, in lieu of going through an exam and issuing a license, putting in a criteria or standards that instructors must meet automatically. If the instructor meets those standards then possibly a certificate could be issued.

President Condon commented that she would like to see a comparison of the passing rate of students over a two-year period if the Board went to the certificate process and then compare that to having fully licensed instructors in every school.

President Condon indicated that teachers at Community Colleges use to have credentials, but this changed and was replaced with minimum qualifications. The Board will need to determine if an instructor's license should continue or if there are other options of setting a qualification standard for instructors to meet. The Board will need to create a study to show justification for teacher qualifications and make recommendations. This would have to be done without creating serious burden on the structure that already exists.

President Condon added that teaching is a skill and you need to know about teaching students and measuring the outcome of their learning. Her concern is that once a license is issued individuals may start applying for teaching jobs without having any teaching qualifications. This could impact students because if unqualified teachers are teaching them then they may fail the exam.

Mr. Gonzalez expressed concern about instructors that are currently teaching at the schools and they are not licensed. He has spoken to many students over the years that indicate they failed the exam because they did not have qualified instructors. His major concern with this issue is the pass and fail rates of the students.

President Condon recommended forming a task force on this subject. The task force should include school owners, instructors, and educators. She would like there to be open discussion about the appropriate qualifications for teachers of cosmetology that does not just focus on bringing back the license, but to look at the qualifications and standards they have to meet. Issuing a license can be an option. The Board needs to ensure that an instructor is qualified, and that this does not have a negative impact on the current situation. Once the task force has met then they can bring forth several recommendations to the Board.

Mr. Gonzalez highly recommends the task force and would like to be a part of it.

There was a consensus by the Committee members present to form this task force and then make recommendations to the full Board.

President Condon asked if there is anything further from the public on this issue.

Mr. Fred Jones stated he represents the Professional Beauty Federation of California. He indicates that their organization is a trade association that represents every segment of the beauty industry, which includes schools and students. He expressed concern if the task force brings several recommendations to the full Board that there would not be an opportunity for the public to comment.

He also advised the committee to keep in mind that the more barriers or hurdles the Board places to qualify for instructor will directly be proportionate to the increase in fees for students. There is a lack of qualified instructors partly because it is not cost efficient to become an instructor.

Mr. Fred Jones made a final comment. He stated the last occupational analysis that was done on the current curriculum as well as the exam has been over a decade. There are many elements as to why there is a poor passage rate. Many students that successfully pass the exam have to be retrained on how to be a salon stylist in today's salon.

President Condon invited anyone that is interested in attending the task force to get in contact with her. She would like to keep the active participation down to seven or eight people.

♦ **Agenda Item #4, OUT OF STATE LICENSES, LICENSURE BY ENDORSEMENT**

President Condon indicated that this is in regards to the implementation of Business and Professions Code section 7331. She referred to Ms. Ciau for background information.

Ms. Ciau stated that section 7331 came out of SB 362, which requires the Board to consider applicants from out of state. The Board is not looking at it as licensing by reciprocity, but by endorsement. The Board along with legal staff prepared draft regulations, but there was a concern among Board members regarding the applicants' knowledge of California's health and safety laws and rules. The suggested additions were: 1) To require out of state applicants to pass an exam that consists of health and safety laws and rules of California and 2) Provide documentation that the applicant has been actively working for the past 5 years. These requirements would be in addition to the requirements already stated in section 7331.

President Condon referred back to the April 7, 2004 Board Meeting to explain the reason this requirement was suggested. After looking at the statistics it appeared there was a high failure rate of those taking the exam that come from out of state. The area of failure in most cases was sanitation. Many of the applicants that fail the exam end up enrolling in a California school to take brush up courses on health and safety.

President Condon explained that part of the reason this is coming about now is because these individuals have had to wait so long to take their exam. They come from out of state with a license, but cannot work until they obtain a California license. The Board's backlog is diminishing, so they will be able to get to take their exam sooner.

Ms. Ciau stated that the items the Board would like to incorporate was discussed with Mr. Bill Gage. She stated that he concurred with the Board's concerns and would agree. Her belief is that the Board is going along with the intent of the legislation.

President Condon asked Mr. Gonzalez and Ms. McInnes if they felt the Board could work with these two recommendations.

Both members agreed with the recommendations.

President Condon stated that the Committee would make the recommendation to the full Board that the two items be accepted as the underlying principle as to how the Board receives the reciprocity regulation.

President Condon opened up this item for public comment.

Mr. Minh Thien asked how long it would take to be scheduled for the exam with these two requirements added.

President Condon responded that it would be a shortened exam and that the Board's backlog is less than in the past. The goal is to have less than a 120-day wait period for everyone.

Ms. Ciau explained that the reason the wait has been so long in the past is because these applications were always put as a low priority for scheduling examinations. Due to law mandates the Board has to schedule students that are graduating from school and submitting pre-applications right away. The Board is trying to achieve a manageable workload, so that the pre-application process may not even be needed.

Mr. Fred Jones commented that he was not at the meeting with Bill Gage and questioned his interpretation. He states that the law is clear that an examination is not part of the requirements. It plainly states that the applicant submits information under current qualifications to receive a license in California. The law only requires a completed application with fee, that the application shows they have a current license from another state and that the license they hold is not revoked or suspended nor has been subject to any disciplinary action. He also mentioned that in the Sunset Review's final report the intent of the legislation is to open the doors of California and to encourage those from within the U.S. to be welcomed into our economy and industry. He was adamant that SB362 does not include nor has room for an examination.

Mr. Dave Hambelton Sr. stated that the Board needs to get people licensed, so that they can go to work and pay taxes. He agreed they need to know the health and safety rules and laws. He encouraged the Board to use their law and enforce it.

Mr. Dave Hambelton Sr. also commented on the subject of cosmetology instructors. He indicated that BPPVE requires individuals to have three years experience to become teachers. His school also requires that they take the exam. He stated that it gives the students something to look at and commitment to that teacher. They need mentors. He believes the Board needs to have a credential requirement.

Mr. Miguel Orozco agreed with Mr. Hambelton. He suggested a code of ethics. Need to elevate the level of prestige. He also expressed interested in being a part of the task force.

Mr. Minh Thien stated that their school has instructors here in California, but that they also have a business out of the country in which their instructors teach in that country. He asked if their students became professionals if they would have a chance to obtain a California license.

President Condon answered that they would have to meet all of California's licensing requirements.

♦ **Agenda Item #5, AGENDA ITEMS FOR NEXT MEETING**

The Committee members discussed and decided they would like to bring the report on the task force on teacher qualifications and standards back to the Committee prior to going to the full Board. This will allow the public an opportunity to comment.

The meeting was adjourned at approximately 3:00 p.m.